

Implied Invitation - Crown Cork and Seal Co. v. Kane

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Implied Invitation*Crown Cork and Seal Co. v. Kane*¹

Appellee Kane, in the course of his employment as a truck driver, was sent to pick up freight at appellant's warehouse. He had to drive up to a loading platform adjacent to appellant's parking lot. Smoking was prohibited in the yard, on the loading platform, and in the warehouse.

¹ 213 Md. 152, 131 A. 2d 470 (1957).

There was, however, a smoking room in the cellar of the warehouse.

The appellee was told by the shipping clerk that it would be some time before his truck was loaded and to "take it easy". He went through the warehouse to the smoking room as he had often done before. When returning through the warehouse, he was struck and injured by a fork lift truck driven by an employee of the appellant.

Kane testified that he had used the smoking room on perhaps thirty previous occasions. He had first learned about it six or seven years before the accident when one of the checkers had told him to go down there and not to smoke elsewhere. He testified that many of the other truckers habitually used the room. However, the foreman of the shipping department testified that the smoking room was for the use of the employees only. He further stated that when he had seen visiting truckers in there, "he chased them right back out". The Court of Appeals affirmed the lower court and permitted recovery, holding that Kane was a business invitee even while going to and from the smoking room. Judge Prescott dissented on the grounds that an "invitee is limited to the 'area of invitation', which is that part or parts of the premises that the owner has thrown open to him for the purpose which makes him an invitee".²

The charge to the jury offered them only two possibilities: Kane was a trespasser or he was an invitee. The question remains whether Kane might have been found to be a licensee while coming from the smoking room, and if so whether the standard of care owed to him would have been any higher than if he had been found to be a trespasser.³ The RESTATEMENT OF TORTS would seem to be authority for offering the jury this third choice — finding that Kane was a licensee.⁴ The RESTATEMENT, before it will classify one as a business invitee, requires that there be some economic interest between the parties, whereas a great many courts require only that there be an implied invitation from the landowner or occupier.⁵

² *Ibid.*, *dis. op.* 164, 165.

³ The Court declined to rule on this since the defendant made no timely objection to the charge of the lower court. *Ibid.*, 162-3.

⁴ 2 RESTATEMENT, TORTS (1934) §330 defines a licensee as "a person who is privileged to enter or remain upon land by virtue of the possessor's consent, whether given by invitation or permission." §332 classifies one as a business visitor only if he is on the land or premises "for a purpose directly or indirectly connected with business dealings between them."

⁵ For a more thorough discussion of the implied invitation or economic benefit theory see PROSSER, LAW OF TORTS (2nd ed. 1955) 452, §78.

Although there was originally an economic interest between Kane and the defendant, it is possible that the business relationship was suspended during Kane's visit to the smoking room.

The Maryland Courts have shown a tendency to declare one a licensee rather than an invitee if there is no economic benefit involved. In *Peregoy v. Western Md. R.R. Co.*,⁶ the Court said that if one enters with the possessor's consent and for the sole interest of the one who is entering, then he is a licensee. The Court further stated:

"An invitee or business visitor is one invited or permitted to enter or remain upon land for a purpose connected with or related to the business of the occupant."⁷

It should be noted that, used in this context, economic benefit is not limited to situations in which the particular visit promises direct, immediate benefit to the owner or occupier of the premises. This point was well illustrated in *Gordon Sleeprite Corp. v. Waters*.⁸ The plaintiff had gone to collect a bill at the defendant's office and finding no one there crossed a yard in back of the office, entered defendant's factory and fell into an elevator shaft. The Court found that he was a bare licensee while in the factory.⁹ If the plaintiff had been injured while in the office, it can be assumed that he would have been an invitee but in going beyond the area of invitation he lost the status of invitee.

The same problem arose in the fourth circuit in *Elkton Auto Sales Corporation v. State of Maryland*.¹⁰ The defendant's business was divided into a show room and a repair shop. The defendant testified that the shop was private and not open to the public. Ferry had gone to the repair shop and was killed. Evidence was shown that customers had entered the repair shop to buy supplies. The dominant purpose of the decedent's visit at the time of the accident was to obtain some oil, but at the same time he conversed with defendant's mechanic regarding possibility of additional work on another automobile awaiting repairs. The

⁶ 202 Md. 203, 95 A. 2d 867 (1953).

⁷ *Ibid.*, 207.

⁸ 165 Md. 354, 168 A. 846 (1933).

⁹ *Ibid.*, 358:

"When the plaintiff wandered into the factory of the defendant, he was a bare licensee, intruder or volunteer, to whom the defendant, under the circumstances, owed no duty of protection . . ."

¹⁰ 53 F. 2d 8 (4th Cir. 1931).

circuit court affirmed a judgment for plaintiff in finding that Ferry was an invitee and stated:

“The substance of the charge was that the jury might find the status of Ferry was that of an invitee if the defendant by its conduct impliedly invited the public to its repair shop. It is well-established law that the defendant’s invitation may be either express or implied.”¹¹

Although this statement by the court merely mentions express or implied invitation, it may still be assumed that the decedent by going to purchase oil still had some economic dealings with the defendant.

It appears that the prior Maryland cases insisted upon a benefit derived or at least a possibility of a benefit to the landowner or occupier as one of the essentials of business invitation. Even though many of these cases make no specific mention of benefit or mere permission, it appears that economic benefit was present in all cases where plaintiff was held to be an invitee.¹² Judge Prescott, dissenting in the instant case, states:

“While I have not completely exhausted the subject, I have found no previous case in Maryland where the ‘economic’ theory has been totally disregarded;”¹³

The instant case (particularly viewed in the light of *Gordon Sleeprite Corp. v. Waters*)¹⁴ presents a real question whether the element of economic benefit, apparently essential to Kane’s status as an invitee, was present during the period in which he was going to, occupying and returning from the smoking room. If the trial judge had given fuller instructions to the jury, it is entirely possible that they would have found Kane to be a licensee only at the time of the injury since it is fairly apparent that Kane went beyond the area of invitation. Prior cases strongly

¹¹ *Ibid.*, 12.

¹² A permissive user was involved in *Myzkiewicz v. Filling Stations*, 168 Md. 642, 178 A. 856 (1935). There the defendant had habitually allowed the plaintiff to cut across its filling station. The court held the plaintiff to be a bare licensee. On the other hand, however, in *Burke v. Md., Del., and Va. R.R. Co.*, 134 Md. 156, 106 A. 353 (1919), the defendant let people come to its wharf for the purpose of going on its steamboat to purchase food. The plaintiff, while waiting to board the boat, was injured. The court in reversing judgment for the defendant found that since the plaintiff would have been an invitee in the store of the defendant he was also an invitee while waiting to enter the store.

¹³ 213 Md. 152, *dis. op.* 164, 165, 131 A. 2d 470 (1957).

¹⁴ 165 Md. 354, 168 A. 846 (1933).

suggest that one must stay in the area of invitation to preserve his status as invitee.¹⁵

While there may be some doubt in Maryland as to when one is a licensee and when one is an invitee, the duty owed to each is more easily determined. In *Benson v. Baltimore Traction Company*,¹⁶ the plaintiff as part of a class visited the defendant company. The plaintiff's class had asked to be invited and the defendant gave its permission. The Court in affirming a judgment for the defendant quoted the Massachusetts case of *Sweeney v. Old Colony Etc. R.R. Co.*:¹⁷

"The owner of the land is not bound to protect or provide safeguards for wrong-doers. So a licensee who enters on premises by permission only, without any enticement, allurements or inducement being held out to him by the owner or occupant, cannot recover damages for injuries caused by obstructions or pitfalls. He goes there at his own risk and enjoys the license subject to its concomitant perils. No duty is imposed by law on the owner or occupant to keep his premises in a suitable condition for those who come there solely for their own convenience or pleasure, and who are not either expressly invited to enter or induced to come upon them by the purpose for which the premises are appropriated and occupied, or by some preparation or adoption of the plan for use by customers or passengers, which might naturally and reasonably lead them to suppose that they might properly and safely enter thereon."¹⁸

It seems reasonable to say that the duty owed to a licensee is fairly well settled in Maryland. However, there still remains some doubt as to when one will be held to be a licensee and when one will be classified as an invitee. Although apparently not mentioned in any case, there seems to be a possibility, from the facts in the *Kane*¹⁹ case, that when a person enters premises as a business invitee and then exceeds his invitation, he will be classified an invitee if there was a custom or implied invitation for

¹⁵ In *Riganis v. Mottu*, 156 Md. 340, 144 A. 355 (1929), the court was careful to point out that plaintiff was asked to inspect lumber in a certain part of the yard. It can be assumed from this careful distinction that parts of a business place can be area of invitation and other places are not.

¹⁶ 77 Md. 535, 26 A. 973 (1893).

¹⁷ 10 Allen (92 Mass.) 368, 87 Am. Dec. 644 (1865).

¹⁸ *Supra.* n. 16, 542.

¹⁹ 213 Md. 152, 131 A. 2d 470 (1957).

him to go to the place not originally covered by his invitation. However, if he wanders to a place where he had never been before or clearly had no right to go, then it seems more likely he will be classified a licensee or perhaps even a trespasser. This question of status on implied invitation or custom will remain in doubt until a clearer view is taken by the Court.

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